IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5389 OF 2004

Mazda Fabrics Processors Ltd. & Ors ...Applicants

Versus

M/s. Priten Trading Pvt. Ltd. & Anr ...Respondents

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Mr. S.M. Jain, Advocate for Applicants.

Mr. S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 29TH JULY, 2005

P. C.:-

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants have prayed for quashing of process issued against them in Criminal Case No. 907/S of 2003 which is pending in the Court of learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai. In the said case, process has been issued against the applicants under Section 138 r.w. 141 of Negotiable Instruments Act.

3. It may be stated here that the applicants had earlier preferred an application before the learned Magistrate for recalling of process. The said

application came to be rejected in view of the judgment of the Apex Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274**. In my opinion, in view of the decision of the Supreme Court in the case of **Adalat Prasad (supra),** it is clear that the Magistrate does not have the power to recall the process issued by him. Hence, no fault can be found with the order of the learned Magistrate in rejecting the application for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicants to prefer revision before the concerned Sessions Court. The learned advocate for the applicants states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for

a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process against the applicants and not in respect of order of the Magistrate rejecting the application of the applicants for recalling of process.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Application is disposed of.

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